

Message Text

PAGE 01 STATE 055011
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INFO AMEMBASSY LONDON IMMEDIATE
AMEMBASSY ROME IMMEDIATE

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LONDON AND ROME FOR STYLES, USCIVAIRDEL

E.O. 11652: N/A

TAGS: EAIR, JA

SUBJECT: CIVAIR - CAB PROPOSES RESTRICTION ON CERTAIN JAL
CHARTER FLIGHTS.

1. ON MARCH 14 USCAB WILL INFORM JAL'S WASHINGTON ATTORNEY
BY LETTER THAT LACK OF RECIPROCITY BY JAPAN FORCES BOARD TO
PROPOSE RESTRICTION ON CERTAIN JAL CHARTER FLIGHTS, I.E.,
THOSE FLIGHTS WHICH OBTAINED HANEDA TIME SLOTS FROM BLOCKED
OFF SCHEDULED FLIGHTS RATHER THAN FROM A SLOT QUOTA SET
ASIDE FOR CHARTERS. ACTION WOULD BE EFFECTIVE APRIL 1.
USDEL PLANS TO RAISE SUBJECT AT UPCOMING CIVAIR NEGOTIA-
TIONS. UNDER PROPOSED RESTRICTION, IF JAL CLAIMS TIME
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SLOTS FOR FUTURE CHARTER FLIGHTS ARE NOT FROM BLOCKED OFF
SCHEDULED FLIGHTS, USG WOULD THEN HAVE EVIDENCE THAT SLOTS
ARE SUFFICIENT FOR CHARTER FLIGHTS AND, PARTICULARLY, FOR
FLIGHTS BY US SUPPLEMENTALS.

2. TEXT OF CAB'S LETTER FOLLOWS IN PARA 3. REQUEST EMBASSY
PRESENT COPY OF TEXT TO APPROPRIATE JCAB AUTHORITIES ON
MARCH 14 UNDER COVER OF EMBASSY LETTER. FYI. CAB WILL
ALSO SUPPLY COPY OF LETTER TO JAPANESE EMBASSY ON MARCH 14.

3. BEGIN TEXT: DEAR MR. SHORT: BY APPLICATIONS FILED
FEBRUARY 3, 15, AND 28, 1977, JAPAN AIR LINES COMPANY, LTD.

(JAL) REQUESTED STATEMENTS OF AUTHORIZATION TO OPERATE THE
FOLLOWING CARGO CHARTER FLIGHTS:

CHARTERER	ROUTING	DATE
ITO YOKADO	MOSES LAKE-HANEDA	2/14/77
COLORADO INTERNATIONAL EXPORTS	MOSES LAKE-FUKUOKA	2/17/77
COLORADO INTERNATIONAL EXPORTS	MOSES LAKE-FUKUOKA	2/22/77
COLORADO INTERNATIONAL EXPORTS	MOSES LAKE-FUKUOKA	2/23/77
DAIEI COMPANY	MOSES LAKE-FUKUOKA	2/27/77
ITO YOKADO	MOSES LAKE-HANEDA	3/3/77
DAIEI COMPANY	MOSES LAKE-OSAKA	3/6/77
B. J. HOLMES COMPANY . .	MOSES LAKE-OSAKA	3/9/77

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IN ACCORDANCE WITH OUR WRITTEN REQUEST OF NOVEMBER 15,
1976, JAL SUPPLEMENTED ITS APPLICATIONS WITH THE STATEMENT
THAT LANDING AUTHORIZATION BECAME AVAILABLE FOR THESE
FLIGHTS AS A RESULT OF BLOCK-OFFS OF JAL SCHEDULED CARGO
FLIGHTS.

AS YOU ARE AWARE, TRANS INTERNATIONAL AIRLINES, INC. (TIA)
AND WORLD AIRWAYS, INC. (WORLD) HAVE HAD A STANDING OBJEC-
TION ON FILE, SINCE AUGUST 1976, TO ALL OFF-ROUTE CHARTER
APPLICATIONS FILED BY JAL. IN ADDITION, ON FEBRUARY 3,
1977, AS PART OF A PETITION FOR REVIEW OF STAFF ACTION
PREVIOUSLY GRANTING JAL OFF-ROUTE CHARTER AUTHORITY, TIA
AND WORLD HAVE REITERATED THEIR OBJECTION TO ISSUANCE OF
OFF-ROUTE AUTHORITY TO JAL. BASICALLY, THE CARRIERS ARGUE
THAT THE EARLY DENIAL OF LANDING RIGHTS TO US SUPPLEMENTAL
CARRIERS BY THE JCAB, AND SUBSEQUENT UNCERTAINTY OF OBTAIN-
ING LANDING AUTHORIZATION, CONSTITUTE A LACK OF RECIPROCITY
WITHIN THE CONTEXT OF SECTION 212.6 OF THE BOARD'S REGULA-
TIONS WARRANTING DENIAL OF OFF-ROUTE CHARTER AUTHORITY TO
JAL; THAT AS A RESULT OF THE UNCERTAINTY OF OBTAINING
LANDING AUTHORIZATION, PREVIOUS AND POTENTIAL CHARTERERS
NO LONGER SEEK TIA'S AND WORLD'S SERVICES, THEREBY DIVERT-
ING TRAFFIC TO JAL AND THE US ROUTE CARRIERS WHO ARE

ASSURED OF OBTAINING LANDING AUTHORIZATIONS; AND THAT,
CONSEQUENTLY, THE SUPPLEMENTALS HAVE BEEN EFFECTIVELY

CLOSED OUT OF THE US-JAPAN CHARTER MARKET. IN ADDITION,
TIA AND WORLD CONTEND THAT JAL'S BLOCKING-OFF TECHNIQUE TO
SECURE SLOT TIME AT HANEDA HAS NO BEARING ON THE QUESTION
OF RECIPROCITY, AND THUS, DOES NOT CONSTITUTE A SOUND BASIS
FOR ISSUING JAL OFF-ROUTE CHARTER AUTHORITY. IN FACT, THE
SUPPLEMENTALS ARGUE THAT THE BLOCKING-OFF TECHNIQUE PLACES
JAL AT A DISTINCT COMPETITIVE ADVANTAGE OVER US CARRIERS.
BASED UPON THE ABOVE, THE SUPPLEMENTALS INSIST THAT
ISSUANCE OF OFF-ROUTE AUTHORITY TO JAL IS NOT JUSTIFIED
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UNDER SECTION 212.6 OF THE BOARD'S REGULATIONS.

UPON CONSIDERATION OF JAL'S APPLICATIONS, THE OBJECTIONS
THERE TO, AND ALL RELEVANT FACTORS, THE DIRECTOR, BUREAU OF
OPERATING RIGHTS, ACTING PURSUANT TO DELEGATED AUTHORITY,
GRANTED JAL OFF-ROUTE CHARTER AUTHORITY TO OPERATE THE
CARGO CHARTER FLIGHTS ON BEHALF OF ITO YOKADO, COLORADO
INTERNATIONAL EXPORTS, B. J. HOLMES COMPANY, AND DAIEI
COMPANY AS DESCRIBED HEREIN. THIS AUTHORITY WAS ORALLY
CONVEYED TO YOU ON FEBRUARY 10, 14, 18, AND MARCH 2, 1977,
AND IS CONFIRMED HEREIN.

NEVERTHELESS, AS JAL IS CERTAINLY AWARE, THE BOARD HAS BEEN
CONCERNED FOR SOME TIME ABOUT THE DENIAL OF LANDING SLOTS
TO US SUPPLEMENTAL CARRIERS, ALTHOUGH THEIR PROPOSED
OPERATIONS WERE WELL WITHIN THE QUOTA PREVIOUSLY AUTHORIZED
THEM BY THE JAPANESE GOVERNMENT. INITIALLY, IN RECOGNI-
TION OF THE GENUINE CONGESTION PROBLEM AT HANEDA, WE WERE
WILLING TO VIEW THESE DENIALS OF SLOT TIMES AS A REGRET-
TABLE RESULT OF THIS CONGESTION, ALTHOUGH THE BOARD
INFORMALLY COMMUNICATED TO THE JAPANESE GOVERNMENT OUR
CONCERNS THAT THE ALLOCATION PROCESS WAS DENYING LEGITI-
MATE BUSINESS OPPORTUNITIES TO THE SUPPLEMENTAL CARRIERS.
ADDITIONALLY, WE WERE ENCOURAGED THAT AFTER THESE REPRE-
SENTATIONS, A NUMBER OF LANDING AUTHORIZATIONS WERE
GRANTED TO THE SUPPLEMENTALS IN OCTOBER AND NOVEMBER OF
1976.

RECOGNIZING THAT THE SUPPLEMENTALS WERE ACCORDED A
PRIORITY IN THE ALLOCATION PROCESS LOWER THAN THAT OF
SCHEDULED CARRIERS, THE UNITED STATES, IN TALKS WITH THE
JAPANESE GOVERNMENT LAST FALL, AND SUBSEQUENTLY BY INTER-
GOVERNMENTAL COMMUNICATION, FORMALLY REQUESTED THAT THE
JAPANESE GOVERNMENT PROVIDE EQUAL TREATMENT TO BOTH
SCHEDULED AND SUPPLEMENTAL AIRLINES IN THE ALLOCATION OF
SLOT TIMES.
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HOWEVER, THE EARLIER PATTERN OF DENIALS AND THE UNWILLINGNESS OR INABILITY OF THE JAPANESE AUTHORITIES TO PROVIDE DECISIONS ON LANDING SLOTS WELL IN ADVANCE OF PROPOSED

FLIGHTS HAD THE CUMULATIVE EFFECT OF DISCOURAGING PREVIOUS AND POTENTIAL CHARTERERS FROM UTILIZING THE SERVICES OF THE US SUPPLEMENTAL CARRIERS AND INDEED OF INDUCING THEM TO TRANSFER THEIR CHARTERS LARGELY TO JAL, WHICH WAS IN A POSITION TO REPRESENT THAT IT HAD LANDING SLOTS. THE END RESULT, WHILE PERHAPS NOT DELIBERATE, IS THAT THE ALLOCATION OF SLOT TIME BY THE JAPANESE AUTHORITIES HAS EFFECTIVELY EXCLUDED THE SUPPLEMENTAL CARRIERS FROM THE US-JAPAN CHARTER MARKET AND HAS DENIED THEM THE BUSINESS OPPORTUNITIES THE JAPANESE GOVERNMENT HAD PREVIOUSLY AUTHORIZED THEM TO SEEK.

IN CONSIDERATION OF THE ABOVE, SINCE NOVEMBER 15, 1976, WE HAVE REQUIRED JAL TO FURNISH WITH EACH OF ITS OFF-ROUTE CHARTER APPLICATIONS A STATEMENT AS TO HOW SLOT TIME AT HANEDA BECAME AVAILABLE TO OPERATE THE PROPOSED OFF-ROUTE CHARTER, IN ORDER TO HAVE A BETTER MEANS WITH WHICH TO DETERMINE THE EXISTENCE OF RECIPROCITY. THESE FILINGS INDICATE THAT, IN VIRTUALLY ALL CASES, JAL OBTAINED THE NECESSARY LANDING SLOTS BY BLOCKING OFF ONE OF ITS REGULARLY SCHEDULED FLIGHTS AND REPLACING IT WITH THE CHARTER FLIGHT. THIS TECHNIQUE OF OBTAINING SLOT TIME APPEARS TO ACCOUNT FOR THE SUBSTANTIAL INCREASE IN JAL'S US-ORIGINATING OFF-ROUTE OPERATIONS, DESPITE EVER INCREASING CONGESTION AT HANEDA, WHILE, AT THE SAME TIME, US CARRIER CHARTER OPERATIONS--BOTH SCHEDULED AND SUPPLEMENTAL--HAVE SUBSTANTIALLY DECREASED. IN 1975 AND 1976, JAL OPERATED 27 AND 55 OFF-ROUTE CHARTERS, RESPECTIVELY. IN THE FIRST THREE MONTHS OF 1976, JAL OPERATED TWO SUCH CHARTERS; TO DATE, IN THE CORRESPONDING PERIOD FOR 1977 JAL HAS APPLIED FOR 19. IN ADDITION, WE UNDERSTAND AT

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LEAST FIVE MORE APPLICATIONS WILL BE FILED IN MARCH. WE WOULD AGREE THAT THE OCCASIONAL CANCELLATION OF A LESS THAN PLANELOAD SCHEDULED FLIGHT IN FAVOR OF A PLANELOAD CHARTER FLIGHT IS A REASONABLE OPERATING TACTIC BY ANY SCHEDULED CARRIER. NEVERTHELESS, THIS PERSISTENT AND EVER-INCREASING PRACTICE BY JAL, SINCE AT LEAST NOVEMBER 15, 1976, HAS REACHED A LEVEL WHICH RAISES SERIOUS QUESTIONS AS TO THE NATURE OF THE SCHEDULED SERVICE PROVIDED BY JAL. IN SUM, IT APPEARS CLEAR THAT JAL IS UNDULY UTILIZING FOR CHARTER OPERATIONS THE SLOTTING RESOURCES WHICH WERE ALLOCATED TO

IT ON THE BASIS OF A SCHEDULED SERVICE; THAT US CARRIERS ARE BEING DEPRIVED OF A FAIR OPPORTUNITY TO COMPETE IN THE US-JAPAN CHARTER MARKET; AND, INDEED, THAT THE TRAFFIC IS BEING DIVERTED FROM US CARRIERS TO JAL AS A RESULT OF THE SLOTTING PROCEDURES.

THE US-JAPAN BILATERAL CIVIL AIR TRANSPORT AGREEMENT, EFFECTIVE SEPTEMBER 15, 1953, DOES NOT ENCOMPASS

NONSCHEDULED AND CHARTER OPERATIONS. AN EXCHANGE OF NOTES, ALSO DATED SEPTEMBER 15, 1953, DOES SET FORTH SOME UNDERSTANDING CONCERNING THE OPERATION OF CHARTERS. THIS EXCHANGE OF NOTES, HOWEVER, CANNOT BE CONSTRUED AS EXTENDING TO THE OPERATION OF CHARTER FLIGHTS MADE POSSIBLE BY THE PERSISTENT PRACTICE OF BLOCKING OFF SCHEDULED FLIGHTS.

MOREOVER, AS INDICATED ABOVE, THE PRACTICAL EFFECT OF THIS PRACTICE HAS BEEN TO ACCORD JAL A MONOPOLY ON US-ORIGINATING US-JAPAN CHARTERS, SINCE THE ABILITY OF US CARRIERS TO MARKET THESE OPERATIONS HAS BEEN SEVERELY ERODED. WHILE WE FULLY APPRECIATE THE CONGESTION PROBLEM AT HANEDA, WE BELIEVE THAT IF A SHORTAGE OF SLOT TIME EXISTS, AS HAS BEEN REPRESENTED, IT IS ONLY EQUITABLE THAT THE EFFECT OF THE SHORTAGE BE SHARED BY ALL CARRIERS SERVING TOKYO, NOT JUST BY US SUPPLEMENTAL CARRIERS. IN THIS SAME VEIN, WE BELIEVE FIRMLY THAT IF SLOT TIME BECOMES AVAILABLE AT LIMITED OFFICIAL USE
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HANEDA BECAUSE OF THE CANCELLATION OF SCHEDULED FLIGHTS, THE EXTRA SLOT(S) SHOULD BE AVAILABLE TO US CARRIERS AS WELL AS TO JAL.

BASED UPON THE FOREGOING, WE HAVE TENTATIVELY CONCLUDED THAT WE CAN NO LONGER MAKE A FINDING OF RECIPROCITY, AS IS REQUIRED FOR ISSUANCE OF OFF-ROUTE CHARTER AUTHORITY TO JAL PURSUANT TO SECTION 212.6 OF THE BOARD'S ECONOMIC REGULATIONS, AS PERTAINS TO OFF-ROUTE CHARTER OPERATIONS BETWEEN THE UNITED STATES AND HANEDA, THE SLOT TIME FOR WHICH IS OBTAINED BY BLOCKING OFF OF A SCHEDULED FLIGHT. ACCORDINGLY, IT IS OUR PRESENT INTENTION NO LONGER TO GRANT OFF-ROUTE CHARTER AUTHORITY TO JAL FOR ANY FLIGHTS THE SLOT TIME FOR WHICH WAS OBTAINED BY THE BLOCKING OFF OF A SCHEDULED FLIGHT OF JAL. WE WILL, HOWEVER, BE WILLING TO CONSIDER APPLICATIONS, WHERE THE SLOT TIME WAS ISSUED JAL FROM WITHIN THE PRESCRIBED ALLOTMENT FOR CHARTER FLIGHTS, OR WHERE A SLOT IN ADDITION TO THE PRESCRIBED ALLOTMENT WAS ISSUED JAL, PROVIDED THAT REQUESTS BY US CARRIERS (SCHEDULED AND SUPPLEMENTAL) FOR SLOTS WITHIN AND ABOVE THE STANDARD ALLOTMENT ARE ALSO GRANTED, IN PROPORTION TO THOSE GRANTED JAL, BY THE JAPANESE GOVERNMENT. FOR THIS REASON THE POLICY STATED ABOVE IS NOT A BLANKET DENIAL OF OFF-

ROUTE CHARTER AUTHORITY TO JAL FOR OPERATIONS BETWEEN THE UNITED STATES AND HANEDA. NOR IS THIS POLICY A BLANKET DENIAL OF OPERATING AUTHORITY BETWEEN THE UNITED STATES AND OTHER JAPANESE POINTS. INDEED, APPLICATIONS FOR OPERATIONS BETWEEN THE UNITED STATES AND JAPANESE POINTS OTHER THAN HANEDA WILL BE CONSIDERED AS IN THE PAST, AND WILL NOT BE SUBJECT TO THE REQUIREMENT CONCERNING THE PROCUREMENT OF SLOT TIME. IN THIS REGARD, WE WOULD EXPECT, OF COURSE, THAT OPERATIONS OF US CARRIERS BETWEEN THE UNITED STATES

AND OTHER JAPANESE AIRPORTS WILL CONTINUE TO BE ACCORDED CONSIDERATION EQUAL TO THAT ACCORDED THE OPERATIONS OF JAL.

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WE RECOGNIZE THAT THE FOREGOING TENTATIVE CONCLUSIONS REFLECT A CHANGE IN POLICY, AND THAT SOME ADVANCE NOTICE OF SUCH CHANGE IS DESIRABLE. MOREOVER, THE UNITED STATES AND JAPAN WILL CONDUCT INTERGOVERNMENTAL DISCUSSIONS ON CIVIL AVIATION BEGINNING MARCH 23, AND WE WOULD WISH TO CONSIDER THE VIEWS OF THE JAPANESE AUTHORITIES BEFORE REACHING FINAL CONCLUSIONS. A COPY OF THIS LETTER IS BEING PROVIDED TO THE JAPANESE AUTHORITIES. ACCORDINGLY, WE ARE DEFERRING THE IMPLEMENTATION OF THE NEW POLICY UNTIL APRIL 1, 1977. IN THE MEANTIME, WE HAVE GRANTED JAL AUTHORITY TO OPERATE THE OFF-ROUTE CARGO CHARTER FLIGHTS DESCRIBED HEREIN, AS WE HAVE GRANTED AUTHORITY IN THE PAST FOR SIMILAR OPERATIONS. IN ADDITION, WE DECIDED TO GRANT JAL AUTHORITY TO OPERATE ITS PROPOSED FLIGHTS ON BEHALF OF THE GENERAL ELECTRIC COMPANY ON FEBRUARY 13, 19, MARCH 2 AND 8, 1977. THIS AUTHORITY WAS ORALLY CONVEYED TO YOU ON FEBRUARY 10 AND 14, 1977, AND IS CONFIRMED HEREIN. ASIDE FROM THE CONSIDERATIONS NOTED ABOVE, OUR DECISION WITH RESPECT TO THE GE PROGRAM WAS INFLUENCED BY THE FACT THAT WE HAVE BEEN AWARE OF THE PROGRAM FOR SEVERAL MONTHS NOW AND, IN FACT, JAL WAS GRANTED A WAIVER OF THE CHARTER-WORTHINESS RESTRICTIONS BY THE BOARD IN ORDER TO OPERATE THE PROGRAM. UNDER THESE CIRCUMSTANCES, WE FOUND THAT IT WOULD NOT BE EQUITABLE TO GE TO DEPRIVE IT OF ITS PROGRAM SO CLOSE TO THE PROPOSED FLIGHT DATES.

IN SUM, PRIOR TO THE TALKS WITH THE JAPANESE IN MARCH, WE ARE PREPARED TO CONSIDER ALL OFF-ROUTE CHARTER APPLICATIONS BY JAL. HOWEVER, AFTER APRIL 1, UNLESS A RESOLUTION OF THIS MATTER IS REACHED IN THE UPCOMING TALKS, WE INTEND TO DENY OFF-ROUTE CHARTER APPLICATIONS FILED BY JAL FOR OPERATIONS BETWEEN THE UNITED STATES AND HANEDA WHERE THE SLOT TIME FOR THE FLIGHT BECAME AVAILABLE TO JAL AS A RESULT OF A BLOCK-OFF OF ONE OF JAL'S SCHEDULED FLIGHTS.

BASED UPON THE FOREGOING, THE BOARD HEREBY CONFIRMS THE

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ORAL ACTIONS OF THE DIRECTOR, BUREAU OF OPERATING RIGHTS,
TAKEN FEBRUARY 10, 14, 18, AND MARCH 2, 1977, UNDER
DELEGATED AUTHORITY, GRANTING JAL STATEMENTS OF AUTHORIZA-
TION TO OPERATE THE FOLLOWING CARGO AND PASSENGER CHARTER
FLIGHTS:

ROUTING	DATE	CHARTERER
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MOSES LAKE-HANEDA	CARGO	2/14/77 ITO YOKADO
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ROUTING	DATE	CHARTERER
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MOSES LAKE-	CARGO	2/17/77 COLORADO INTL.EXPTS.
FUKUOKA		

DETROIT/TOKYO/ PASSENGER 2/19-28/77 GENERAL ELECTR. CO.
HONG KONG/
DETROIT

MOSES LAKE-	CARGO	2/22/77 COLORADO INTL.EXPTS.
FUKUOKA		

MOSES LAKE-		
FUKUOKA	CARGO	2/23/77 COLORADO INTL.EXPTS.

MOSES LAKE-	CARGO	2/27/77 DAIEI COMPANY
FUKUOKA		

ATLANTA-TOKYO PASSENGER 3/2-12/77 GENERAL ELECTR.CO.

TAMPA/ PASSENGER 3/8-18/77 GENERAL ELECTR. CO.
LOS ANGELES/
TOKYO

MOSES LAKE-	CARGO	3/3/77 ITO YOKADO
HANEDA		

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MOSES LAKE-	CARGO	3/6/77 DAIEI COMPANY
OSAKA		

MOSES LAKE-	CARGO	3/9/77 B.J.HOLMES CO.
OSAKA		

FOR THE CIVIL AERONAUTICS BOARD: PHILLIS T. KAYLOR,
SECRETARY. END TEXT.

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Message Attributes

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